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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

LADALE DEVON ROY,

Defendant and Appellant.

E064615

(Super.Ct.No. PAR1501456)

OPINION

APPEAL from the Superior Court of San Bernardino County. James Robert Gericke, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Richard Power, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Following a parole violation hearing, the trial court found defendant violated a term of his parole by possessing a weapon. Defendant was thereafter reinstated on parole and ordered to serve 180 days in county jail. Defendant appeals from the judgment. We find no error and affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

On October 8, 2013, defendant was convicted of possession of a controlled substance (Health & Saf. Code, § 11378) and sentenced to two years in state prison.

On June 5, 2014, defendant was released on parole on various terms and conditions of parole. On June 9, 2015, Parole Agent John Lunasco gave a copy of defendant's parole conditions to defendant. In relevant part, these terms included that defendant shall submit to a urine sample upon request (term No. 2); that defendant shall not own, use, possess, or have access to a firearm (term No. 5); and that defendant shall not wear gang clothing (term No. 60).

On September 1, 2015, a petition to revoke defendant's parole was filed alleging defendant violated term No. 5 by possessing a firearm. The petition was later amended orally to add allegations that defendant violated term Nos. 2 and 60 of his parole.

On September 2, 2015, defendant's parole was preliminarily revoked pending further hearing.

A parole violation hearing was held on September 29, 2015. At that time, Parole Agent Lunasco testified that he supervised defendant during August 2015 and that he had given defendant a copy of his parole conditions on June 9, 2015, and. Defendant's parole conditions included a weapons term, a gang term, and submission of a urine sample upon request. Defendant acknowledged these terms.

On August 25, 2015, Parole Agent Lunasco arrested defendant after he searched defendant's cellular phone and found pictures of interest. One of the pictures showed defendant "wearing a very distinctive red color shirt with a gun, or what looks like a gun, pointed at the camera with a finger in the trigger." The details of the photo indicated it was taken on August 7, 2015, a date within defendant's parole period. Parole Agent Lunasco noted the person depicted in the picture looked substantially similar to defendant's present appearance. Defendant informed Parole Agent Lunasco that the phone belonged to his girlfriend.

Parole Agent Lunasco also spoke with defendant on August 25, 2015, about submitting to a urinalysis. Defendant was supposed to provide Parole Agent Lunasco with a urine sample each time he came to the reporting center. Parole Agent Lunasco initially stated defendant declined to provide a urine sample; however, he later acknowledged he did not recall whether defendant provided a sample that day or not.

Defendant's girlfriend testified on behalf of the defense. She stated that she recognized the picture on her cell phone; that she did not take the picture; and that the picture was an old picture, taken before defendant was on parole. She further claimed

that the picture was from an SD memory card she obtained from a friend at school; that the SD card originally was with defendant; that the SD card was then given to her; and that SD card was in her cell phone at the time defendant was arrested. She also testified that the picture was of defendant holding a BB gun.

Defendant, who was 30 years old at the time of the parole hearing, testified on his own behalf. He stated that the picture on the cell phone was taken by a friend when he was 18 years old; that the memory card had been kept for him at a motel he worked at since 2010 when he went to prison; and that he had given the memory card to his girlfriend. He claimed that the memory card had survived for 12 years, passed from cell phone to cell phone. Defendant also asserted that he told his parole agent that the gun in the picture was not a real gun and that the picture was taken before he was on parole. Defendant further explained that he has never been validated as a gang member and that he had worn colors to the parole office multiple times, such as a red hat, blue shirt, and blue pants.

Following argument, the trial court made no finding as to the allegation that defendant failed to provide a urine sample. As to the gang allegation, the court found insufficient evidence to show defendant violated the gang term by wearing gang colors or clothing. As to the picture found on the cell phone, the court did not believe it was 12 years old. The court concluded, from looking at the photograph and having sufficient familiarity with firearms, that the gun was not a BB gun but rather a pistol with a large bore. The court also found that the picture was downloaded to defendant's girlfriend's

cell phone on August 7, 2015, and that it was not taken before defendant was sent to prison. The court concluded defendant was in violation of his parole for possession of a weapon. The court thereafter immediately reinstated defendant on parole and ordered defendant to serve 180 days in county jail with a credit of 36 days for time served.

On October 6, 2015, defendant filed a timely notice of appeal from the contested parole violation hearing.

II

DISCUSSION

After defendant appealed, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts and potential arguable issues, and requesting that this court conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, and he has not done so.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the entire record for potential error and find no arguable error that would result in a disposition more favorable to defendant.

III

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

McKINSTER
J.